

Kofi Annan and International Law in Kenya

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Dr. Kofi Annan, the former Secretary General of the United Nations, died recently. Many Kenyans took to social media to mourn the death of the African diplomat they had come to know through his efforts in curbing the [2008 post-election violence](#).

Annan and the 2007 Election in Kenya

The 2007 election in Kenya was charged and emotive. Mr. Raila Odinga, the then President Kibaki's main challenger, had assembled an impressive team headed by a Pentagon. The Pentagon consisted of Mr. Odinga himself, Mr. William Ruto (now the Deputy President), Mr. Musalia Mudavadi, Mr. Najib Balala, Mr. Joe Nyaga and Mrs. Charity Ngilu. The team of six was bullish about winning the vote. When the election came, Mr. Odinga took an early lead. At some point he led the incumbent by more than a million votes. The President recovered and was declared the winner. The process of the President's "catching up" was marred by allegations of massive vote rigging that charged the atmosphere around the country. But it was the decision to swear him in for a second term at night that seemingly tipped the country over. The country erupted. Violence was reported in many parts of the country. Tribal wars were waged. The government unleashed the security apparatus that also participated in the bloodbath. The country was swiftly descending into anarchy.

That is how two gentlemen that were to become popular in Kenya entered the scene: Ghanaian diplomat Kofi Annan and Argentine lawyer Louis Moreno-Ocampo.

Dr. Annan came first, as a mediator. He was tasked with the job of getting the two sides to talk to each other and come up with a solution to the mess. He led the talks that led to the National Accord, the agreement that was passed by parliament to form the basis for the Coalition Government. The National Accord was a precursor to constitutional reforms in the country. The process of revamping the constitution had stalled after the 2005 referendum vote that had seen the government backed draft defeated. Two years after the Accord was signed, Kenyans participated in another vote that ushered in the Constitution of Kenya 2010.

The constitution recognizes international law as part of the laws of Kenya. This has caused a debate amongst lawyers over whether treaties that Kenya has ratified need to be domesticated. Be as it may, the constitution gives strength to international law. This has been especially important in the area of human rights. While Kenya has a robust [Bill of Rights](#) in the 2010 Constitution, champions of human rights have had the added advantage of relying on international law while making their cases

in courts. Provisions of the ICCPR, ICESCR, the African Charter on Human and People's Rights and Universal Declaration of Human Rights amongst others have been quoted [in court](#) with increased authority in the course of defending human rights.

The Waki Envelope and the entry of ICC into the Kenya scene

Dr. Annan's work in Kenya was not finished when peace prevailed. Justice Philip Waki, the head of the commission that was tasked with investigating the post-election violence, handed him a secret envelope after he had submitted his report. His instruction was that if Parliament failed to set up a local tribunal to prosecute the perpetrators of post-election violence, then Dr. Annan should hand over the envelope to the ICC prosecutor.

The Kenyan parliament shot down the bill that would have set up the tribunal, and that is how Dr. Annan welcomed the second gentleman into Kenya: ICC Prosecutor Luis Moreno-Ocampo. Mr. Ocampo came to Kenya breathing fire and brimstone. He promised indictments and convictions. Many Kenyans adored him. Children were named after him. Posters with his face were splashed everywhere. His stubble, gruff voice and brisk mannerism became iconic.

When Kenyans needed peace, the calm demeanor of Annan was reassuring. When Kenyans needed people to hang, the demeanor of the Argentine prosecutor inspired confidence in the justice system. Mr. Ocampo indicted six Kenyans, including the (now) President and Deputy President. But from there things went downhill. Kenyans watched in dismay as the cases floundered, one by one. Ocampo retired, but not even his composed successor, the calm African lawyer Fatou Bensouda, could save the situation.

The falling apart of the cases was a blow to international law in Kenya. When Kofi Annan handed over the envelope to the ICC, many Kenyans had faith in the Hague based institution. Even when the Kenyan government engaged in shuttle diplomacy with the aim of undermining the institution, many Kenyans were convinced that the Hague would prevail, and convictions would be procured.

The convictions did not come. The six were set free. No one else was indicted or prosecuted. The ICC was exposed as a toothless bulldog. This was evident in the elections. The 2013 election, which happened while the ICC cases were going on, was subdued. Politicians generally behaved themselves. But in 2017, when all the cases had collapsed, the vitriol was back with full force. It was actually surprising that post-election violence did not happen again. The ICC had lost its deterrent effect in Kenya.

But whereas International Criminal Law has taken a beating in Kenya, we can take comfort in the fact that at the very least, international human rights law influenced the Bill of Rights in the Constitution and that international law itself is recognized

by that Constitution. That counts for something. Unlike before, Kenyans have since 2010 been able to move to court to have their rights enforced and get positive results.

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